IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1164 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJAB NATIONAL BANK LTD.

Versus

AHMEDABAD TEXTILE CORPORATION

Appearance:

1. First Appeal No. 1164 of 1984
MR AC GANDHI for Petitioner No. 1
MR SANDIP C SHAH for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Heard learned counsel for the parties. The appellant original plaintiff has filed the present appeal making grievance that the trial court has, while decreeing the Summary Suit No. 1794 of 1978 on 23rd December, 1983, erred in awarding interest on the principal amount only at the rate of 6 per cent per annum from the date of the filing of the suit till the realization. It is the contention of the appellant that in view of the provisions of section 34 of the Code of Civil Procedure, the learned trial Judge ought to have exercised his discretion in favour of the plaintiff by granting interest at the agreed rate namely 18 per cent per annum.

Since the dispute is on a very narrow compass, it is not necessary for us to narrate the pleadings.

The appellant instituted the Summary Suit for recovery of Rs.1,17,046.00 against the respondents original defendants. The defendants, in response to the summons issued by the trial court, appeared and also filed their written statement. However, it appears that the respondents have not entered the witness box to support their claim. It is stated that they have not remained present thereafter and the advocate for the defendants was compelled to file No Instruction Purshis because of the failure on the part of the defendants to remain present before the trial court. There is, therefore, no evidence in support of the contentions raised by the defendants in their written statement before the trial court and, therefore, the trial court has held that the plaintiff has proved the suit claim against the defendants namely that they had granted to the defendants loan to the tune of Rs.1,00,000.00 against the Purchase of Bills (Demand Documentary) for presented by the defendant to the plaintiff for realization and that the defendant agreed to pay interest at the rate of 18 per cent per annum on the loan withdrawn and in view of that, the trial court answered the issues framed at Exh. 41 in favour of the plaintiff and decreed the suit in favour of the plaintiff and against the defendants and ordered that the defendants shall pay Rs. 1,14,842.16 ps. as principal amount plus Rs.1953.02 ps. towards interest and Rs.50.00 towards notice charges together with interest at the rate of 6 per cent per annum on the original amount and costs of this suit to the plaintiff.

Learned counsel for the appellant has submitted

that even though the learned trial Judge has observed that the rate of interest agreed in the Promissory Note is 18 per cent per annum which is according to the business custom considering the prevailing economic trend, as the said rate has been held to be reasonable, there was no justification on the part of the trial court to pass decree with interest at the rate of 6 per cent only without assigning any reasons in that regard. We quite see substance in the submissions made by the learned counsel for the appellant. Section 34(1) of the Code of Civil Procedure deals with interest and provides that where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Proviso to the said section provides that where the liability in relation to the sum so adjudged had arisen out of a commercial transactions, the rate of such further interest may exceed six per cent per annum, but shall not exceed the commercial rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Applying the aforesaid provisions to the facts of the present case, undoubtedly, the transaction between the parties was commercial in nature and, therefore, ordinarily, rate of interest shall be the contractual rate or such rate at which moneys shall be lent by the nationalized bank in relation to the commercial transaction. Admittedly, the defendants in this case have committed default in payment and, therefore, the plaintiff was required to file the suit and, therefore, the defendants cannot have the benefit of lesser rate of interest. In our opinion, therefore, in the instant case, contractual rate of interest is a matter of rule and, therefore, no departure is permissible. Under the circumstances, the learned trial Judge has committed obvious error in passing the decree with interest at the rate of 6 per cent per annum and that too without assigning any reasons. Curiously, the learned trial Judge has awarded Rs.1953.82 ps. being the amount of interest for a period from 1.4.1978 till the date of suit which is admittedly at the rate of 17.5 per cent per

annum. In other words, the learned trial Judge has accepted the fact that the plaintiff is entitled to get a decree with interest at the rate of 17.5 per cent per annum, of the transaction took place prior to the date of the suit. If that is so, there was no reason not to grant interest at the same rate i.e. 17.5 per cent per annum while passing the decree in favour of the plaintiff.

In view of this, appeal is required to be allowed and it is hereby allowed. The defendants are hereby directed to pay the decretal amount at the rate of 17.5 % per annum from the date of the suit till the date of realization thereof in full. We accordingly set aside the directions issued by the trial court to pay the decretal amount with interest at the rate of 6 per cent per annum from the date of the suit till the realization thereof in full. Appeal is accordingly allowed with no order as to costs.

18.10.2002. (Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

Vyas